

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

LEGACY CAPITAL LTD.,

Defendant.

Adv. Pro. No. 10-05286 (SMB)

STIPULATION AND ORDER FOR ENTRY OF FINAL JUDGMENT

Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III, and the substantively consolidated chapter 7 estate of Bernard L. Madoff individually, by and through his counsel, Baker & Hostetler LLP, and defendant Legacy Capital Ltd. (“Legacy,” collectively the “Parties”), hereby state as follows:

WHEREAS, on December 6, 2010, the Trustee commenced this adversary proceeding seeking to avoid and recover fraudulent transfers allegedly received by Legacy in connection with BLMIS account 1FR071;

WHEREAS, on July 2, 2015, the Trustee filed his Amended Complaint in this adversary proceeding against Legacy (the “Complaint”);

WHEREAS, the Bankruptcy Court issued a Memorandum Decision Regarding Motions to Dismiss the Trustee’s Amended Complaint on March 14, 2016 (Doc. 134) (the “Motion to Dismiss Decision”) and entered an Order in connection therewith on April 12, 2016 (Doc. 137) (the “Motion to Dismiss Order”);

WHEREAS, at a hearing on November 3, 2016, the Bankruptcy Court ruled on the Trustee’s Motion for Judgment on the Pleadings (Doc. 154) (the “Motion for Judgment on the Pleadings Ruling”);

WHEREAS, the Bankruptcy Court issued a Memorandum Decision and Order Granting Relief Under Federal Civil Rule 56(g) on June 25, 2019 (Doc. 221) (the “Summary Judgment Decision”) and entered an Order in connection therewith on July 10, 2019 (Doc. 222) (the “Summary Judgment Order”);

WHEREAS, the Parties have agreed to consent to the Bankruptcy Court’s entry of a final order and judgment in connection with the Trustee’s avoidance claim;

WHEREAS, with respect to Count One of the Trustee’s Complaint, the Parties agree to entry of a Final Judgment and Order against Legacy in the amount of \$79,125,781.00 (the “Legacy Transfers”); and

WHEREAS, the Parties have agreed to certify that direct appeal to the United States Court of Appeals for the Second Circuit is warranted under 28 U.S.C. § 158(d)(2)(A), with each Party preserving all arguments, theories, claims, and defenses for appeal.

NOW, THEREFORE, the Parties agree and stipulate to the following:

1. This Court has jurisdiction over this proceeding under 28 U.S.C. § 1334(b), 15

U.S.C. § 78eee(b)(2)(A) and (b)(4), and Order No. M 10-450 (S.D.N.Y. July 10, 1984), as amended by Amended Standing Order of Reference, No. M 10-468, 12 Misc. 0032 (S.D.N.Y. Jan. 31, 2012). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (H), and (O);

2. The Parties expressly and knowingly grant their consent for the Bankruptcy Court to enter final orders and judgments on all claims in the Complaint, subject only to appellate review under 28 U.S.C. § 158(d);

3. The Bankruptcy Court shall enter a final order and judgment in the amount of \$79,125,781.00 as to the Legacy Transfers in Count One of the Trustee's Complaint;

4. The Legacy Transfers are avoidable and avoided under § 548(a)(1)(A) and recoverable from Legacy under § 550(a) of the Bankruptcy Code;

5. The final order and judgment shall be without prejudice to all parties' arguments, theories, claims and defenses for appeal including but not limited to all arguments, theories, claims and defenses previously advanced by the Parties in connection with the Motion to Dismiss Decision, Motion to Dismiss Order, Motion for Judgment on the Pleadings Ruling, Summary Judgment Decision and Summary Judgment Order, and including but not limited to arguments, theories, claims and defenses asserting that the Legacy Transfers are not avoidable and should not have been avoided; and

6. The Parties consent to direct appeal to the United States Court of Appeals for the Second Circuit and certify that direct appeal is warranted under 28 U.S.C. § 158(d)(2)(A).

Dated: November 8, 2019

BAKER & HOSTETLER LLP

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Attorneys for Defendant Legacy Capital Ltd.

Dated: November 12, 2019

IT IS SO ORDERED:

/s/ STUART M. BERNSTEIN

HONORABLE STUART M. BERNSTEIN

United States Bankruptcy Judge